STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN CRIMINAL DIVISION

CRIMINAL DIVISION
DOCKET NO.: 2165-6-15; 1106-4-16; 261-2-16; 3813-10-15; 4245-11-15 Cncr

STATE OF VERMONT

V.

Veronica Lewis, Defendant

NOTICE OF DISMISSAL

NOW COMES the State of Vermont, by and through State's Attorney, Sarah F. George Esq., and pursuant to V.R.Cr.P 48(a) hereby dismisses WITHOUT PREJUDICE the Informations in the above captioned cases. In support of this motion, the State offers the following:

1. On June 30, 2015, Defendant was arraigned on one count of Attempted First Degree Murder.
2. On October 26, 2015, at the request of the State, a competency evaluation was ordered. Dr. Paul Cotton was selected by the Department of Mental Health [DMH] to conduct such an examination, however due to Defendant's unwillingness to participate, no examination or findings were accomplished.
3. On August 23, 2016, at the request of Defense counsel and the State, and after a hearing, another attempt at a competency examination was granted by the Court and Dr. Cotton was again selected as the DMH forensic psychiatrist to complete the examination. Meanwhile, Defense counsel hired Dr. David Rosmarin to evaluate Defendant for competency and sanity.
4. On January 24, 2017, after a hearing, the Court found (final entry order dated March 20, 2017) that Defendant "understands the fundamentals of

court procedure and process but at this time does not have an ability to consult with her attorney with a reasonable degree of rational understanding", and was therefore found not to be competent to stand trial.

5. On April 4, 2017 the parties engaged in a hospitalization hearing and on April 10, 2017 the Court issued findings and a hospitalization order. Pursuant to 13 V.S.A. 4822, Defendant was then and there committed to the care and custody of the Commissioner of Mental Health, to be hospitalized for an indeterminate period.
6. On January 18, 2018, the parties agreed that Defendant was competent to stand trial.
7. On March 1, 2018, Defendant informed the State that she intended to use an insanity defense at trial. In support, Defendant disclosed a report by Dr. David Rosmarin, a forensic psychiatrist, in which he opined with a reasonable degree of psychiatric certainty and based on all the information available to him, that Defendant lacked the adequate capacity to conform her behavior to the requirements of law, and that this inability was due to a major mental illness. Specifically, Dr. Rosmarin diagnosed Defendant with Schozoaffective Disorder. He opined that at the time of the shooting, Defendant was paranoid, highly delusional, terrified, and suffering from a formal thought disorder with extremely concrete thinking; were it not for the combination of her chronic and then-active psychosis, she would not have shot the victim.
8. In response, the State retained Dr. Jonathan Weker, a forensic psychiatrist. Dr. Weker, after a careful review of the records available to him, also opined with a reasonable degree of psychiatric certainty that Defendant lacked the adequate capacity to conform her behavior to the requirements of law, and that this inability was due to a major mental illness.

9. This case presents the issue of whether Defendant was criminally responsible at the time of the alleged offenses. Lack of criminal responsibility is commonly referred to as legal insanity. Before such a defense is considered, the State must prove each essential element of the offenses charged beyond a reasonable doubt. If the State meets this burden, it is Defendant's burden to prove by a preponderance of the evidence that he was insane at the time the crimes were committed and is therefore not criminally responsible. Proof by a preponderance of the evidence means that the defense is more likely than not true. This burden of proof is less than the burden of proof beyond a reasonable doubt.
10. Consequently, in order to obtain a conviction after an initial showing by defense that Defendant was legally insane at the time of the offenses, the State must rebut the issue of insanity with admissible evidence that tends to show Defendant was sane at the time of the alleged offense. The issue is then ultimately decided by a jury. However, if the State does not have sufficient evidence to rebut Defense counsel's evidence that Defendant was insane at the time of the offense, it is the State's belief that they have a prosecutorial duty not to go forward with the charge.
11. In this case, in light of the opinions of Dr. Rosmarin and Dr. Wecker, Defense counsel has substantial admissible evidence to prove by a preponderance of the evidence that Defendant was insane at the time the crimes were committed and is therefore not criminally responsible. The State does not have sufficient evidence to rebut this insanity defense. Therefore, the State cannot meet its burden of proving the Defendant is guilty beyond a reasonable doubt; rather, the evidence shows that Defendant was insane at the time of the alleged offenses.
12. Further, Defendant is currently in the custody of DMH and has been since April of 2017. The Commissioner of DMH confirmed that it makes no difference to DMH, as far as treatment and discharge determinations, whether Defendant is found not guilty by reason of insanity after a trial or

if the criminal charges are dismissed. It is the State's expectation that DMH will maintain custody over Defendant until the community can be assured that she is no longer a risk of harm to himself or others, and the interests of justice have been served. The State has given DMH access to all discovery materials in this case to aid them in making their determinations.

DATED: May 31, 2019.

Sarah F. George Esq.
State's Attorney

cc: Jessica Brown, Esquire
William Kidney, Esquire